



HULL & HULL LLP
Barristers and Solicitors

An Update on Multiple Wills

Multiple wills are a common estate planning strategy that can assist in minimizing the Estate Administration Taxes payable upon the filing of an Application for a Certificate of Appointment of Estate Trustee with a Will. This topic was previously covered in one of our previous Solicitor's Tips (available [here](#)).

When primary and secondary wills are used, one or both of the documents may refer to the ability of the estate trustee to determine which assets are considered to require probate and, accordingly, fall into either estate. A recent decision of the Ontario Superior Court of Justice suggests that terms that may result in uncertainty regarding the assets (if any) that fall into a primary estate or secondary estate may affect the validity of the wills as a whole. In *Milne Estate (Re)*, 2018 ONSC 4174 (CanLII), Justice Dunphy found a primary will to be invalid on the basis that it provided the estate trustees with absolute discretion in retroactively determining whether any assets were vested under the will at date of death. Justice Dunphy cautioned as follows (at para 27):

If multiple wills are to be employed – and I fully recognize that these are a quite common and normally unobjectionable estate planning tool – the property that is subject to each must be ascertainable objectively based upon the expressed intent of the testator without regard to discretion of the Estate Trustees exercised afterwards.

It is possible that the *Milne Estate* decision will be appealed. In the meantime, however, it would be prudent for drafting solicitors to keep Justice Dunphy's recent comments in mind when implementing estate plans consisting of multiple wills.